

BOARD OF ZONING APPEALS

Minutes

January 23, 2001

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on January 23, 2001, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: JOHN ROGERS, JAMES B SKELTON, RANDY PHILLIPS, FLOYD PITTS. JAMES P. RUANE late in at 1:35 p.m. The following Board member were absent: MARY DE SENA and BRADLEY TIDEMANN.

The following Planning Department staff members were present: DALE MILLER, Secretary, SCOTT KNEBEL Assistant Secretary, Recording Secretary, ROSE M. SIMMERING

Also present SHARON DICKGRAFE -- Assistant City Attorney.

Absent: J.R.COX -- Commercial Plan Review/Commercial Zoning -- Office of Central Inspection.

PITTS: It is now 1: 30 p.m. and we will call the Board of Zoning Appeals to order. We will ask the recording secretary to call role.

SIMMERING: Completes role call.

PITTS: I believe that we do have a quorum. But we have a situation in place where we must have a majority of four votes to either pass or deny anything coming before us. So having said that if you have had an opportunity to read the minutes from December the 19th meeting the Chair will entertain a motion.

PITTS moves

ROGERS: Mr. Chairman, I do have one question on the minutes. On page 5, at the bottom, Mr. Miller refers to a statement that he has brought the schedules for 2001 to the Board to approve it. My question is, since I chaired that meeting, was I to put that up for a vote? Or was it a review?

KNEBEL: I don't think it is necessarily required to have a vote. I seem to recall that it did have a vote. But I don't think it is anything critical that we do. I mean we got the calendar and everybody has reviewed it and I think it is acceptable.

ROGERS: Ok, very good. The way that was worded, I wanted to make sure that was not a mistake.

PITTS moves ROGERS seconds to approve the meeting minutes for December 19, 2000.

MOTION CARRIES 4-0.

PITTS: Case number BZA 2000-00070.

KNEBEL: It looks like my computer for the presentation just crashed.

SIMMERING: Do you need me to call Kirby?

KNEBEL: No. It was all set up and then it crashed. That is weird.

PITTS: You have that set up for PowerPoint?

KNEBEL: Yes, but it just went blank and the computer crashed.

PITTS: Computer is probably dead.

KNEBEL: I can't even turn the button on and off to turn the thing off to re-start it. I guess we will just skip the slides, I don't know that we have any other options.

I don't know how many people had a chance to visit this site, there are some drawings attached that kind of demonstrate, visually what is being proposed. The property is a single-family residence at 1833 N. Market. The current residence is constructed in a manner such that it is located 1.5 feet from the north property line. It was constructed prior to the property being platted. When the property was platted a 100 years ago or so, I don't know if there were setbacks required on the side yard or not, but the requirement today is 6 feet in order to conform with the setback in the "B" Multi-Family zoning district that this property is in.

The applicant is requesting if you can see on the first survey, you can see that there is a 12 foot by 14 foot area on the back of the house. They are proposing to square off by adding on to that to the north and to the west of the existing structure. They would like to maintain the solid wall along the north line, which would require that addition to encroach into the side yard setback to the same level as the current structure does.

In reviewing this, planning staff feels that it meets the criteria for a variance. I will go over those quickly.

As far as being unique, we think that since the structure is already constructed in such a manner that adding on to that structure on that lot is limited in the manner in which it can be done and that is not always the case. This is in an older area where the lots are quite a bit narrower than lots are in more suburban style locations.

As far as an impact on the adjacent properties, the adjacent property to the north which would have the most impact, is a driveway between the house on the subject property and the house on the property to the north and the two structures themselves even today are separated by approximately 20 feet. That separation between those properties would exist and that is 8 feet greater than is required by

the zoning code, so I don't think there is going to be any adverse impact as a result of that.

As far as the hardship, we talked about the fact that there is really only one logical way to add on to this structure, and it really creates a hardship for both financially in figuring out a way to add on to the structure some other way and long term adding on to the structure in a manner that doesn't make sense with the internal use of the building.

As far as the public interest, there is no encroachment into any of the utility easements or street right-of way so there is not impact on the general public.

As far as the spirit and intent, the intent of the side yard setbacks is provided for fire protection, separation needed for light and air circulation, and pedestrian and vehicle access. All of which are provided for even with the building being at the 1.5-foot setback rather than 6 feet.

Based on those findings, staff is recommending that the variance to reduce the side yard setback from 6 feet to 1.5 feet be approved subject to:

- 1) The building being constructed in conformance with the site plan and elevation drawings that are attached to the reports that you have there.
- 2) The acquisition of local permits that are necessary. And completion of the improvements within one year of the decision of this body.
- 3) The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

I will answer any questions you may have at this time.

PITTS: Let me begin by asking, and I am sure it is in here somewhere, I just have not been able to dig it out. What is the size of the proposed addition?

KNEBEL: I believe it is 14 by 12. I was thinking there was the one drawing.

GLADYS HOEFER speaking from audience...(I can't hear though what she said exactly).

KNEBEL: Is that correct?

PITTS: 14 X 12 then would just fill-in that 14 X 12 structure?

KNEBEL: Right.

PITTS: So you would not be going any further west with the structure per say other than the fill-in?

KNEBEL: Right.

PITTS: All right. Thank you. Are there any other questions for staff?

PHILLIPS: I do have some. I am glad to get the verbal clarification on that because right now it does refer to in the staff report here and it does specifically talk about the fact of the site plans and improvements shown. But, to be real honest, I don't think I can operate on a verbal approval here. I would like to see some documentation, the drawings that were submitted are not clear, they do not specifically tie anything down. Unless, I am missing something, maybe I need to see what has been submitted. But I have a couple grid sheets, two of them are elevations and one is what appears to be beginning of a floor plan and then I have an as built survey. But other than the comment Scott that you just provided for us, there is no documentation on what we are really doing here.

I mean I understand the setback, but I can't even vote on this thing until I see something that is real. I am kind of surprised staff is looking at this thing and talking about this. In the fact that it looks as though you guys have done your homework and written everything out. But you talk about a site plan and elevation to prove in the reduction in this thing...Well recommendation number one, I don't see anything you can include as supportive back-up for that.

KNEBEL: Ok.

PHILLIPS: I am speaking for myself. The rest of the Board may feel differently then that. I wanted to bring this up. Also, Mr. Ruane is here and I am sure that probably needs clarified. But, we do have another Board member joining us here.

But, I would like to see some additional documentation. I think as it is proposed I don't have a problem with it other than the fact the documentation is not what I would like to see.

KNEBEL: Ok. Let me see if I am correct about this. There is a document that is on the grid paper here and you are saying that you think the quality of that particular thing that shows the proposed addition is insufficient?

PHILLIPS: Use the word "quality", yes, lack of quality.

PITTS: It doesn't tell us anything.

PHILLIPS: There is not enough information there that I would actually want to even vote on. I see no dimensions. I don't see anything tied down. The as built survey I think is fine but there is no indication other then the description right now of what the applicant is wanting.

KNEBEL: I don't think it photo-copied very well but there is on that first grid paper sheet there are lines for the existing walls of the structure and then dashed lines showing the area where the proposed additions are. Now there aren't any dimensions distances printed on there.

PHILLIPS: I think those need to be on here, anytime somebody submits something to me.

KNEBEL: If we do that it does make it a little more expensive and a little bit more difficult for homeowners.

PHILLIPS: No it doesn't. I disagree with you. It does not. Information is not expensive. I am not asking for a different drawing, the same drawing could have been provided, I don't know who did the drawing could have included the information that we are talking about very simply. I am not talking about the homeowner to incur any additional cost. But, I mean the homeowner's have incurred some cost in going through the application. If you are going to do that you should have the application done properly. I just don't consider this drawing in this packet of information complete.

I think we can get there and I am sure that we can do that today. But, I think we are going to have something on this thing a little bit more.

KNEBEL: He will let you speak here in a minute.

PHILLIPS: I am kind of bringing this thing up because from your standpoint I think staff would want to have things tied down a little better. I think it is not going to take much more. But, in the future I think it would benefit everybody if we could establish a little bit of a standard. This was a pretty simple one to use as what information what we have here. I really don't see anything that defines what this is about, I am talking about from a pictorial sense. We ought to have some dimensions on this thing. The grid sheet is fine but we lack specific information. I don't know how the rest of the Board feels about it but that is my recommendations.

PITTS: I do concur Randy, but when we ask about the fill-in we really do know exactly where it is going to be structured, but the plans as you have said do not show that per say. I would just assume that once they get a building permit that the building permit would perhaps parallel with what we are told here.

PHILLIPS: If we have a document though that specifically spells it out, there is not question about what they can apply for. All I am saying is let us do our homework today, do it right, get it spelled out and I don't have a problem with it. What I do have a problem with is having something this ambiguous that they expect us to issue an opinion on. I have seen it happen. I don't want there to be any problems for staff and/or the homeowner's. I am not trying to argumentative from the standpoint of just being argumentative; but I do think that we do need information if we can get that today, we are ready to move on with the vote once there is a motion.

PITTS: Are you suggesting that perhaps staff could provide us information right now that we could perhaps alter our documentation here that would work?

PHILLIPS: I think that we should have something here that we can work with and issue a vote on. But, I also think that in the future staff should be aware what we are expecting and what we can work with and what we can't and I really think that in the future that this is not adequate. When people come to you for this, I think you ought to be able to tell them, this is fine but a little more additional

information would be helpful.

SKELTON: I want to make a comment. I absolutely could not make any sense of this either, Scott.

KNEBEL: Ok, it didn't photocopy, all that well.

PHILLIPS: If you have some additional drawings and the applicant can maybe bring them forward that may help.

KNEBEL: It is a little more, clearer, on something that is not all one color.

PHILLIPS: In fairness to the Board here, it is not our responsibility to have to look and count squares on the grid paper to assume that it is 14 X 12 or 14 feet X 12.2. Those are simply dimensional items that can be included here that I think staff can provided the criteria to the applicants for and say we need to have an outline of the proposed addition that specifically ties it down from a dimensional standpoint, that is not that hard.

KNEBEL: There are criteria that we have for site plans and they are quite a bit more stringent then what is here. But, quite frankly we don't get a whole lot of support from other Boards that we deal with that requires applicants to conform to those.

PHILLIPS: I am not sure that really applies to us to be real frank. I think that we need to here since we deal with a very specific issue and we don't try to get into a bunch of broad issues that if we are going to deal with something specific we ought to have specific information and that criteria ought to be followed.

If you have that I would say great, enforce it more often. I think this Board has always felt that the more specific information we have from the applicant and maybe I am arguing a general item here when I shouldn't be. But, I think the more we have the better off we can perform our duties for the applicant as well as staff and I think we can feel good about the votes that we provide or the actions that we take.

PITTS: Randy, what do you feel that can be done today to provide us sufficient information so that the applicant won't have to come back before us, or so don't we won't have defer it?

PHILLIPS: This one is very simple. It really is. I think basically they have outlined what they want, I think that is clear. But, I think we should tie this thing down to a fact that it is roughly 12 feet 2 ½ inches X 14 feet multiplied out X number of square foot addition at that location. I wasn't clear when I saw this thing from the drawing how far they were going out or what. I really didn't have any idea, I kind of knew where it was and could guess a little bit.

PITTS: I didn't either.

PHILLIPS: I think if they want to include verbiage to the fact that it will not project or that the total length of the house will never be more than 46.2 feet, to me that helps. Because what I really worry about a little bit there is all sorts of ways to take this thing and rearrange it to where it becomes a little different configuration. But if we are talking about just filling in a notch, I understand, I probably agree with staff on their findings, I just want to make sure that it is tied down properly so the documentation on this will support itself.

PITTS: How are we going to proceed with obtaining the documentation?

PHILLIPS: If there is some additional drawings?

PITTS: Can staff do something today with the homeowner and us and perhaps we need to take a five-minute break that would fulfill our requirements.

PHILLIPS: I think that, what I have heard we have a bad photo-copy, maybe that information is on there that I didn't see.

RUANE: Circulate the original for additional clarification.

PHILLIPS: Yes, let us look at what you have, or bring the applicant up and let the applicant provide additional information and I think we can probably get through it.

KNEBEL: Go ahead and show him that one.

APPLICANT: I have got the original that was presented to the Historic Preservation Board.

PHILLIPS: We have a procedure here that if you help us with it I think we can work a little better.

APPLICANT: Well, what do you want?

PITTS: Please state your name for the record please.

GLADYS HOEFER HOMEOWNER AT 1833 N. MARKET:

PHILLIPS: Now, I think if you have some additional drawings, you are welcomed to circulate them to the Board so we can look at that or if you have the original we would be glad to look at that.

HOEFER: I have the original that was submitted to both you and to the Historic Preservation Board.

PHILLIPS: Well we have a photocopy, I just want you to know that is what we are looking at.

HOEFER: It is hard to make 10 originals. May I approach closer to show you these originals?

PHILLIPS: Sure that is what we are hoping to do.

HOEFER: It would have been nice to know that these drawings were not good enough.

SKELTON: Let me show you what and why I can not make sense of this, it is really hard to see anything and if I am not familiar with that and I understand.

HOEFER: We did the whole application, we are squaring off that "L".

PITTS: We are here to help you.

PHILLIPS: I think you need to understand, we have some procedures to follow and that if we don't follow them and the information is not done right it can come back on you. What I am bringing up right now are issues that will protect you in the long run.

HOEFER: That is fine. I am a homeowner sitting here and you're saying my drawings are screwy.

PHILLIPS: Did not.

HOEFER: And saying that it is incomplete. I don't even know what else you want on there. You want 12.2 X 14? I can add that.

PITTS: He may have been directing his remarks towards staff. They perhaps should have provided us with better information.

HOEFER: We can write that on there right now.

MILLER: Let me interject here. Staff is not going to draw site plans for people. Because in the past, when we have done that then what happens is the Commission or the Board doesn't like that site plan the applicant then says I didn't draw that staff did it.

PHILLIPS: Dale, I think we can come back to this as a general item.

HOEFER: So tell me what I need to add there.

PHILLIPS: I think if we can remain calm here, we are going to try and accommodate you. I think if you will remain calm, and listen to what we are trying to say here, this is going to be to your benefit, not your detriment.

What I would like to do is specifically on one of the drawings and maybe we can do that is transfer the dimensions that we have on the as built survey onto a drawing that is here. One of the problems is that green and blue does not Xerox very well unfortunately that is probably not something everybody knows. I think if we want to we can even include by, actually, if staff doesn't feel comfortable in making the graphic adjustments, we can include it by description. And say that we have a proposed addition that will extend complete the existing structure that

the addition would be 12.2 feet in a westward direction 14 feet in a northern direction and complete the house that would leave in an overall dimension of 46.2 feet X 28 feet. Then I have no problem with doing that if that something would help staff at this point.

PITTS: What was that last dimensions you just quoted Randy.

PHILLIPS: As far as the overall structure? It would be a length of 46.2 and a total width of the entire structure of 28 feet. The addition then would be the total of the 14 X 12.2 feet as far as the total area added to the building. Would you like to have your original drawings back?

HOEFER: I sure would.

PHILLIPS: Thank you.

PITTS: That appears to be the intent, Randy, and I believe that we can perhaps take care of that if you can put that in a motion.

PHILLIPS: I will be glad to in a few moments. I would like to clarify something to the applicant, would you mind remaining at the podium. I can see you are upset because the process here is not clear to you. My intent is not to upset you. My intent as is this Board is to protect you, because if we do not clarify this thing and it goes through the process, you are going to be dealing with Central Inspection. If that is not clarified and it is not clear here as it goes down, you probably are going to have to go through the whole process again and anything that is not clear here becomes less clear as it goes on through the process.

As an Architect I am trying to protect you as a homeowner. As a Board member I am trying to protect you as a homeowner. I just hope that you understand that our intent is not to upset you in any way. It is to actually to close the door on this so that when it is decided or disposed of one way or the other it is clear and simple. Legal has everything they need and the rest of the process goes smoothly for you. If it not done right here, it will not be a smooth process, because you are not done with this.

HOEFER: Exactly.

PHILLIPS: Central Inspection will want us to be clear and they are going to want to know what it is. That is my intent here is to make sure that everything is clear and the documentation is done right.

HOEFER: That is great. I wish I had known that on December 1. Cause this is 60 days later.

PHILLIPS: If we get it done right now does it make a difference?

HOEFER: When you have spent \$350.00 for one thing, \$300.00 for something else and then you come up 60 days later and you still haven't jumped through all

of the hoops correctly because you didn't know. I was trying.

PHILLIPS: I wish you could have to. But, what we are trying to do is dispose of this thing properly. That is what the process is for. But, we haven't seen this for 60 days.

PITTS: I still think that we have an opportunity here that we can clarify the intent of this and get it into a motion.

DIECKGRAFE: I think you need to make sure that there is no one else to speak for or against.

PITTS: Is there any persons here to speak in favor of the motion? Anyone to speak in opposition to the request? Then we will bring the discussion to the bench.

PHILLIPS moves SKELTON seconds that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions as set out in the Secretary's Report. As well as, clarifying the issue of the exact extent of the addition in question. To clarify that would be to square off the structure to a totally rectangular structure that would be a total of 46.2 feet in the east/west direction and a total of 28 feet on the north/south direction. The addition then would consist of a 12.2 feet east and west by a 14-foot north/south addition sum total of that and that be the subject area as referenced in staff's report.

PITTS: Staff is that clarification enough for us to proceed?

MOTION CARRIES 5-0.

PITTS: Reports from Central Inspection? J. R. Cox is not here, so no items for Agenda Item number #3.

MEETING ADJOURNED 2:00 p.m.

BZA RESOLUTION NO. 2000-00070

WHEREAS, Gladys Hoefer and George V. Bever (Owner)/(Applicant), pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the side yard setback from 6 feet to 1.5 feet for home expansion on property zoned "B" Multi-Family Residential legally described as follows:

Lots 26 and 28, Block 5, Fairview Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located north of 17th Street North and west of market (1833 N. Market).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of January 23, 2001, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590(B), Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owners or the applicant. It is the opinion of staff that this property is unique inasmuch as the structure is already built. The lot is compact and additions to the structure would have to occur in the requested location.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the addition to the structure would be internal to the subject property. No additional encroachment would occur along the north boundary of the subject property that is in excess of the existing placement of the structure. The addition to the structure would abut the existing driveway of the property to the north, and the separation between the structure on the subject property and the structure on the property to the north would be approximately 20 feet.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of staff that the strict application of the provisions of the Zoning Code constitutes an unnecessary hardship upon the applicant, inasmuch as the lot space is limited and any logical addition to the structure would require building into the existing zoning setback.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way as a result of this reduction of the side yard building setback and therefore there will be no effect on the general public.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setbacks will continue to provide for fire protection, separation, light and air circulation, and pedestrian access.

WHEREAS, each of the five conditions required by Section 2.12.590(b), Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request be approved for a variance to reduce the side yard building setback from 6 feet to 1.5 feet for home expansion on property zoned "B" Multi-Family Residential described as follows:

Lots 26 and 28, Block 5, Fairview Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located north of 17th Street North and west of market (1833 N. Market).

RECOMMENDATION: Should the Board determine that conditions necessary to the granting of the variance exist, then it is the recommendation of the Secretary that the variance to allow a reduction in the side yard building setback from 6 feet to 1.5 feet for home expansion be APPROVED, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the side yard setback shall be reduced from 6 feet to 1.5 feet on the north side of the property. This setback reduction shall apply only to improvements which shall square-off the rectangular structure to a total of 46.2 feet in the east-west direction and 28 feet in the north-south direction for a total addition of 12.2 feet in the east-west direction and 14 feet in the north south direction, as shown on the site plans and elevation drawings approved by the Board of Zoning Appeals. The addition shall be constructed in general conformance with said site plans and elevation drawings.
2. The applicant shall obtain all local permits necessary to construct the indicated improvements, and all improvements shall be completed within one year following the BZA approval of the variance unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 23rd DAY OF JANUARY , 2001.

Floyd Pitts, BZA President

ATTEST:

Scott Knebel, BZA Assistant Secretary